

[ORAL ARGUMENT SCHEDULED FOR DECEMBER 13, 2023]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHAWN MUSGRAVE,

Plaintiff-Appellant,

v.

MARK WARNER, Chairman, and SENATE
SELECT COMMITTEE ON
INTELLIGENCE,

Defendant-Appellee.

No. 22-5252

**REPLY IN SUPPORT OF MOTION TO PARTICIPATE
IN ORAL ARGUMENT**

The United States moved for leave to participate in oral argument.

The government captioned that motion as unopposed and noted in the opening paragraph that the parties do not oppose participation by the United States but disagree on how the government’s oral argument time should be allocated. Further details regarding the parties’ positions were provided later in the motion.

Appellant has submitted a “partial opposition” to the motion, contending that the government’s caption was “misleadin[g]” because the

motion was “opposed by both parties except under mutually exclusive conditions.” Partial Opp’n 1. The motion only seeks leave to participate at oral argument and does not make any request with respect to allocation of time. As explained in the motion, neither party stated an opposition to participation by the government at oral argument. Indeed, the fact that appellant submits a “partial opposition” and does so only “insofar as [the motion] might be construed as a motion for additional oral argument time on top of the time allotted to Appellees,” *id.*, seems to confirm that there is no opposition to the mere request for participation. Regardless, counsel apologizes for any misapprehension caused by the title of the motion.

The United States believes that its expertise and familiarity with the issues on appeal could be of assistance to the Court. The Executive Branch is also vested by the Constitution with the authority and responsibility to protect information bearing on the national security, such as the classified information contained in the report sought by Musgrave. The government stands ready to participate in oral argument in whatever form and for whatever time the Court deems appropriate.

Respectfully submitted,

MICHAEL S. RAAB

s/ Thomas Pulham

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NOVEMBER 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point CenturyExpd BT, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 270 words, according to Word for Microsoft 365.

s/ Thomas Pulham

Thomas Pulham

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2023, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system

s/ Thomas Pulham

Thomas Pulham